

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DANIEL M. ANDREOLA, SR,

Plaintiff,

v.

Case No. 04-C-282

DENNIS GLASS,

Defendant.

ORDER

Plaintiff Daniel Andreola, a prisoner serving a sentence in the custody of the Wisconsin Department of Corrections, filed this action on March 22, 2004, alleging that Defendant Dennis Glass had violated his First Amendment right to exercise his religion by failing to provide him with kosher food. A jury trial was held on August 8 and 9, 2006 and a jury verdict was returned in favor of the defendant. Judgment was entered on August 10, 2006 and the case was affirmed by the Court of Appeals on January 24, 2008.

Andreola has now filed a motion to vacate the judgment entered by this Court pursuant to Fed. R. Civ. P. 60(b), which provides that the Court may relieve a party from a final judgment upon a showing of fraud, misrepresentation or other misconduct by an adverse party. Andreola alleges that Glass committed perjury by testifying that he had ordered kosher food when he had not done so. As an initial matter, Andreola's motion appears untimely. Fed. R. Civ. P. 60(c)(1) requires that such a motion in the court and action in which the judgment was rendered must be brought no more than one year after the judgment was entered. Here, it has been more than one year since the Court

entered judgment in this matter on August 10, 2006. Furthermore, the jury in this case concluded that Andreola did not hold a sincere religious belief in Judaism, precluding his claims. Whether Glass purchased kosher food is therefore irrelevant, and Andreola would not be entitled to the relief he seeks even if his motion were timely.

Andreola has also filed a motion to enjoin the Wisconsin Department of Corrections from implementing a policy regarding kosher food, and a motion to compel the Department to provide him with a kosher diet low in cholesterol and salt, pursuant to his doctor's orders regarding his cardiac health. These claims are wholly distinct from this action. To the extent they assert cognizable claims, which is doubtful, each must be brought as the subject of a new action, subject to new filing fees and requirements.

THEREFORE IT IS ORDERED that Andreola's motion to vacate judgment is **DENIED**.

IT IS FURTHER ORDERED that his motion to enjoin the Wisconsin Department of Corrections from implementing a policy regarding kosher food is **DENIED**.

IT IS ORDERED that Andreola's motion to compel the Wisconsin Department of Corrections to provide him a kosher diet low in cholesterol and salt is also **DENIED**.

Dated this 23rd day of July, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge